



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

APR 28 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

W. Kent Corry, Registered Agent
J&J Oil Operations, Inc.
630 W 200 N
P.O. Box 1107
Cedar City, UT 84721

Re: In the Matter of: J & J Oil Operations Inc.
Administrative Complaint and Notice of Opportunity for Hearing
Docket No. CWA-08-2006-0026

Dear Mr. Jenkins:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against J & J Oil Operations, Inc., pursuant to its authority under section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii). EPA alleges in the Complaint that J & J Oil Operations Inc., located at 55 East 680 South, Provo, Utah, is in violation of the oil pollution prevention requirements set forth at 40 C.F.R. part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321 (b)(6)(A).

Specifically, the Complaint alleges that J & J Oil Operations Inc., failed to prepare and implement a Spill, Prevention, Control and Countermeasure ("SPCC") plan for its facility in writing and in accordance with 40 CFR §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during an unannounced SPCC inspection of the facility on June 16, 2005. The Complaint proposes a total penalty up to \$53,272.00 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the

following address:

Ms. Tina Artemis, Regional Hearing Clerk, (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set for the in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgment may be entered pursuant to 40 CFR § 22.17. This judgment may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or request a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Donna Inman and Marc Weiner. Ms. Inman is in our Technical Enforcement Program and can be reached at (303) 312-6201. Mr. Weiner in is our Legal Enforcement Program and can be reached at (303) 312-6913.

We urge your prompt attention to this matter.

Sincerely,

for Eddie A. Serna
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Notice of SEC Disclosure
Public Notice
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water
Act, dated August, 1998.
EPA Supplemental Environmental Projects Policy, dated May 1, 1998



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 APR 28 AM 8:18

IN THE MATTER OF)

Docket No. CWA-08-2006-0026

J & J Oil Operations, Inc.
Provo, Utah)

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

Proceeding to Assess Class II Civil Penalty
Under Section 311 of the Clean Water Act

Respondent.)

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent, J & J Oil Operations, Inc. is a corporation organized and existing under the laws of the State of Utah.
3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
4. Respondent is the owner of J & J Oil Operations, Inc. ("facility"), located at 55 East 680 South, Provo, Utah 84603.

5. The Respondent is an "owner and operator" of an "onshore facility" within the meaning of CWA sections 311(a)(6) and (10), 33 U.S.C. §§ 1321(a)(6) and (10).
6. The facility has a total above-ground oil storage capacity of approximately 171,325 gallons.
7. The facility is located one block east of storm water drains that drain to Mill Race Creek which flows directly to Utah Lake located about one mile south of the facility.
8. Mill Race Creek and Utah Lake and the tributaries thereof are "navigable waters" and "waters of the United States" within the meaning of section 502(7) of the Act, 33 U.S.C § 1362(7), and 40 C.F.R. § 110.1.
9. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by...the Administrator.
10. As alleged herein and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R § 19.4, Respondent is liable for civil penalties up to \$11, 000 per day during which the violations continues, up to a maximum total of \$157,500 for all violations.
11. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from vessels and from onshore and offshore facilities, and to contain such discharges..."

12. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part

112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

“to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines...”

13. The facility is a non-transportation onshore facility which, due to its location, may reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

14. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

15. This regulation (40 C.F.R. § 112.3) requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in writing, and in accordance with applicable sections of part 112 including, but not limited to sections 112.7 and 112.8.

16. On or about June 16, 2005, an authorized EPA inspector entered the facility with the consent of facility owner and operator, J & J Oil Operations, Inc., to determine the facility’s compliance with the requirements of the Oil Pollution Prevention Regulations (also known as Spill Prevention Control and Countermeasure Plan or SPCC regulations).

17. The facility has a total capacity of approximately 171,325 gallons.

18. At the time of the June 16, 2005 inspection, no SPCC Plan had been prepared by

Respondent for the facility as required by 40 C.F.R. § 112.3.

19. At the time of the inspection, the following SPCC implementation measures were found to be deficient at the facility:

- a. No secondary containment for tank truck transfers to storage tanks located inside warehouse; for tank truck transfers to tanks located outside tank farm, 40 C.F.R. § 112.7(c);
- b. No written procedures for inspectors and tests, 40 C.F.R. § 112.7(e);
- c. No program of personnel training to prevent discharges, for discharge response, or periodic discharge briefings, 40 C.F.R. § 112.7(f);
- d. No secondary containment at the loading rack, 40 C.F.R. § 112.7(h)(1));
- e. No system to prevent premature departure of tank trucks prior to disconnection of transfer arms at the loading rack, 40 C.F.R. § 112.7(h)(2);
- f. Undiked areas with potential for discharge do not drain to a pond, lagoon, or catchment basin designed to retain oil, 40 C.F.R. § 112.8(b)(3);
- g. No secondary containment for bulk storage tanks located inside warehouse, 40 C.F.R. § 112.8(c)(2);
- h. No program of integrity testing for the bulk storage tanks, 40 C.F.R. § 112.8(c)(6);
- i. No secondary containment for 55 gallon or 275 gallon totes inside warehouse, 40 C.F.R. § 112.8(c)(11); and
- j. Piping to the loading rack appears to warrant corrosion protection, integrity, and leak testing, 40 C.F.R. § 112.8(d)(1)

20. Respondent failed to prepare and implement an SPCC plan in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. Respondent's failure to prepare and implement a complete SPCC plan for the facility in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 constitute violations of C.F.R. § 112.3 and section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c).

PROPOSED CIVIL PENALTY

21. Based on Respondent's failure to properly prepare and implement a Spill Prevention Control and Countermeasures (SPCC) plan at its facility in violation of 40 C.F.R. § 112.3 and section 311(j) of the Act, 33 U.S.C. § 1321(j), and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$53,272.00

as set forth below. Complaint proposes this penalty after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history or prior violations, the nature, extent, and degree of success of an efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors that justice may require.

22. Specifically, the proposed penalty amount represents major noncompliance due the Respondent's failure to prepare an SPCC plan and provide for secondary containment for all the bulk containers, portable containers, the loading/unloading areas, and the loading/unloading rack. The potential or actual environmental impact of a discharge was deemed to be moderate due to the fact that a discharge would flow immediately to a storm drain into Mill Race Creek and then on to Utah Lake. Culpability was deemed significant since the Respondent operates other bulk oil businesses currently in compliance with SPCC requirements and has the resources to prevent the violations. Furthermore, Respondent has received at least two prior notices of violation(s) by EPA for other facilities under its control. Additionally, the penalty was increased one-half of one percent for each month the Respondent has failed to come into compliance. The Respondent did not qualify for any penalty reduction based on the mitigation factors. No additions were made to the proposed penalty amount for history of violations or economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

23. If Respondent does not contest the findings and penalty proposal set out above this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R § 22.18.

If such payment is made within 30 calendar days of receipt of the Complaint, no answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check, to:

Donna Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6201

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

24. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request

an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

And a copy must be sent to the following attorney:

Marc Weiner, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, Co 80202-2466
Telephone: (303) 312-6913

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDTGMET MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

PUBLIC NOTICE

25. Pursuant to section 311(b)(6)(C) of the Act, 33 USC § 1321 (b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a final order assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE

26. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore

this possibility in an informal settlement conference. If you (or your attorney, if you choose to be represented by one) have any questions or wish to have an informal settlement conference with EPA, please call Marc Weiner at (303) 312-6913. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 04/25/2006

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: April 24, 2006

M. D. Weiner
Marc D. Weiner, Enforcement Attorney
Legal Enforcement Program
U.S. EPA, Region VIII
999 18th Street, #300 (Mail Code: 8ENF-L)
Denver, CO 80202-2466
Telephone (303) 312-6913
Facsimile: (303) 312-6953

1st Page only

**CIVIL PENALTY POLICY
FOR SECTION 311(b)(3) AND SECTION 311(j)
OF THE CLEAN WATER ACT**

**Office of Enforcement and Compliance Assurance
August 1998**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
999 18th Street, Suite 300, Denver, CO 80202-2466

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND
OPPORTUNITY TO COMMENT ON CWA COMPLAINT**

Action: EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment (complaint) for alleged violations of the Clean Water Act.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding, if any. The deadline for submitting public comment is thirty days after issuance of this notice.

On April __, 2006, EPA commenced a civil administrative action by filing a complaint against the Respondent identified below, alleging a violation of the CWA and its regulations. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: J & J Oil Operations, Inc.
55 East 680 South
Provo, UT

EPA Docket Number: CWA-08-2006-00xx

Proposed penalty in the Complaint: \$53,272.00

Alleged violations: Failure to implement a Spill Prevention Control and Countermeasure Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3, regulations issued under Section 311(j) of the CWA.

Submit written comments to: Tina Artemis
Regional Hearing Clerk (8RC); EPA Region 8
999 18th Street, Suite 300;
Denver CO 80202-2466
Telephone: (303) 312-6765.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Consolidated Rules, the Complaint, or other documents in this proceeding, or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Region 8 Hearing Clerk Office identified above and the file will be open for public inspection during normal business hours. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman



NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(1) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(11) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(E) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec. 22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 *Ex parte* discussion of proceeding.

22.9 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.

22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a Federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 306(g) and 311(b)(6)(B)(i) of the Clean Water Act and section 142(c) of the Safe Drinking Water Act.

22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(d); 15 U.S.C. 2615, 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 3006–3008, 6925, 6928, 6931e and 6932d; 42 U.S.C. 7413(d), 7524(c), 7546(d), 7547, 7601 and 7607(a), 8609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a)).

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7546(d) and 7547(d)).

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 106(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1416(a) and (f)).

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6931e, and 6932d), except as provided in part 24 of this chapter.

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 306(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(e), 1321(b)(6), and 1342(a)).

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609).

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections

EPA SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

Effective May 1, 1998

A. INTRODUCTION

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage regulated entities to adopt pollution prevention and recycling techniques in order to minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs that are consistent with this Policy. SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement